

REMARKS/ARGUMENTS

As stated above, Applicants elect Group I, claims 1-17, drawn to a water-in-oil micro-emulsion for further prosecution and respectfully traverse the requirement for restriction for the following reasons:

As an initial matter, the Examiner has stated that the water-in-oil micro-emulsion is anticipated by *Abofazeli et al. International Journal of Pharmaceutics* 1994, 111, 63-72 as a justification for finding that the micro-emulsion does not make a contribution over prior art and therefore unity of invention is lacking and restriction is appropriate; however *Abofazeli et al.* refers to phase diagrams of micro-emulsions containing an oil phase (isopropylmyristate), a soy bean lecithin and several "co-surfactants" selected from amines (see FIGS. 2 and 3), acids (FIG. 1), and several alcohols as the Examiner pointed out, namely: alcandiols (FIG. 4), diethylenglycolmonoethers (FIG. 5), alcanols (FIGS. 6, 7 and 8). Obviously, there are very different results concerning the stabilization of such systems (see *Abofazeli et al.* under "Discussion").

Although the Examiner has taken the position that *Abofazeli et al.* anticipates FIG. 1 by disclosing a micro-emulsion of isopropylmyristate, a phospholipid and alcohols, it should be noted that present claim 1 is directed to a micro-emulsion comprising an oil, an emulsifier (e.g. a phospholipid and optionally (namely from 0% of) an alcohol. Even when alcohols -- presently only C₁-C₈ alcohols -- are present, however, then there is still another decisive feature in the micro-emulsions as presently claimed, namely the mixture of O/W and W/O surfactants in a specific ratio 1:4 to 1:1.2. (See current claim 1). Applicants have been unable to find any such surfactant (tenside)-combination disclosed in *Abofazeli et al.* Therefore, it is respectfully submitted that *Abofazeli et al.* cannot anticipate Applicants claims for these reasons alone.

In addition, *Abofazeli et al.* discloses micro-emulsions exclusively containing only four components, namely:

- i) an oil (isopropylmyristate),
 - ii) water,
 - iii) a first emulsifier, namely lecithin (an ionic tensid),
- and
- iv) a second emulsifier, namely a variable cosurfactant

(tensid).

The emulsifiers are present in an equal amount (ratio 1).

Contrary to *Abofazeli et al.*, Applicants' micro-emulsion as set forth in claim 1 always comprises at least five components, namely:

- i) an oil (e.g. isopropylmyristate, component a) claim 1,
- ii) water (component e),
- iii) a first emulsifier (component c), e.g. lecithin),
- iv) a first non ionic surfactant, namely a W/O-emulsifier,

and

(v) a second non ionic surfactant, namely an O/W-emulsifier, (component b), whereby this ratio is between 0.25 (1:4) and 0.83 (1:1.2), see claim 1.

In addition, certain alcohols (as further emulsifiers) could also be present as the 6th component (see component d, claim 1).

Thus, it is respectfully submitted that the *Abofazeli et al* micro-emulsions can in no way anticipate Applicants' presently claimed subject matter.

In addition, it is believed that any search for the invention embodied in Group I would necessarily include a search of the inventions embodied in the remaining groups. Thus, the simultaneous search for all groups is believed not to constitute an unreasonable search for the Patent Examiner.

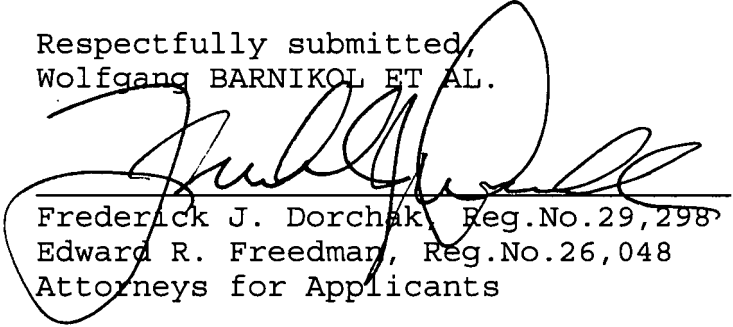
In addition, it is believed that the objectives of streamlined examination and compact prosecution would be promoted if a search were conducted simultaneously for all the groups. Also, the necessity of filing multiple patent applications in this case does not serve to promote the public interest because of the extra expense that is involved, in filing fees and examination costs, as well as the burden upon the public, due to the necessity of searching through a multiplicity of patent files in order to find the complete range of the subject matter claimed in several different patents that could otherwise be found in one issued patent only.

Applicants reserve the right to file a divisional applications for the non-elected inventions.

For all these reasons, it is respectfully requested that the restriction requirement under 35 U.S.C. 121 be withdrawn and that an action on the merits of all the claims be rendered.

Respectfully submitted,
Wolfgang BARNIKOL ET AL.

COLLARD & ROE, P.C.
1077 Northern Boulevard
Roslyn, New York 11576
(516) 365-9802



Frederick J. Dorchak, Reg.No.29,298
Edward R. Freedman, Reg.No.26,048
Attorneys for Applicants

FJD:cmm

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on October 1, 2007.



Amy Klein